

AMENDED IN ASSEMBLY JUNE 15, 2004

AMENDED IN SENATE MAY 12, 2004

AMENDED IN SENATE APRIL 26, 2004

AMENDED IN SENATE APRIL 1, 2004

SENATE BILL

No. 1818

**Introduced by Senator Hollingsworth
(Principal coauthor: Senator Ducheny)**

February 20, 2004

An act to amend Section 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1818, as amended, Hollingsworth. Density bonuses.

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus or other incentives or concessions for the production of lower income housing units within the development if the developer meets certain requirements, including a requirement that the applicant agree or propose to construct a specified percentage of the total units for specified income households or qualifying residents. Existing law also requires an additional density bonus or additional concession or incentive to be granted to a developer of housing that meets those requirements and includes a child care facility, as defined, subject to specified conditions. Existing law prohibits the legislative body from establishing fees to support the work of the

planning agency that exceed the reasonable cost of providing the service for which the fee is charged.

This bill would revise the above-described provision to, among other things, require, when a developer seeks a density bonus for a housing development within, or for the donation of land within, the jurisdiction of the local government, that the local government provide a density bonus or other incentives or concessions for the production of housing units and child care facilities, as specified. By increasing its duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65915 of the Government Code is
2 amended to read:

3 65915. (a) When an applicant seeks a density bonus for a
4 housing development within, or for the donation of land for
5 housing within, the jurisdiction of a city, county, or city and
6 county, that local government shall provide the applicant
7 incentives or concessions for the production of housing units and
8 child care facilities as prescribed in this chapter. All cities,
9 counties, or cities and counties shall adopt an ordinance that
10 specifies how compliance with this section will be implemented.

11 (b) A city, county, or city and county shall either grant a density
12 bonus and at least one of the concessions or incentives identified
13 in subdivision (l), or provide other incentives or concessions of
14 equivalent financial value based upon the land cost per dwelling
15 unit, when the applicant for the housing development seeks and
16 agrees to construct at least any one of the following:

17 (1) Ten percent of the total units of a housing development for
18 lower income households, as defined in Section 50079.5 of the
19 Health and Safety Code.



1 (2) Five percent of the total units of a housing development for
2 very low income households, as defined in Section 50105 of the
3 Health and Safety Code.

4 ~~(3) Twenty-five percent of the total dwelling units of a housing~~
5 ~~development for qualifying residents, as defined in Section 51.3~~
6 ~~of the Civil Code.~~

7 *(3) A senior citizen housing development as defined in Sections*
8 *51.3 and 51.12 of the Civil Code.*

9 (4) Ten percent of the total dwelling units in a condominium
10 project as defined in subdivision (f) of, or in a planned
11 development as defined in subdivision (k) of, Section 1351 of the
12 Civil Code, for persons and families of moderate income, as
13 defined in Section 50093 of the Health and Safety Code.

14 The city, county, or city and county shall grant the additional
15 concession or incentive required by this subdivision unless the
16 city, county, or city and county makes a written finding, based
17 upon substantial evidence, that the additional concession or
18 incentive is not required in order to provide for affordable housing
19 costs, as defined in Section 50052.5 of the Health and Safety Code,
20 or for rents for the targeted units to be set as specified in
21 subdivision (c).

22 (c) (1) An applicant shall agree to, and the city, county, or city
23 and county shall ensure, continued affordability of all lower
24 income density bonus units for 30 years or a longer period of time
25 if required by the construction or mortgage financing assistance
26 program, mortgage insurance program, or rental subsidy program.
27 Those units targeted for lower income households, as defined in
28 Section 50079.5 of the Health and Safety Code, shall be affordable
29 at a rent that does not exceed 30 percent of 60 percent of area
30 median income. Those units targeted for very low income
31 households, as defined in Section 50105 of the Health and Safety
32 Code, shall be affordable at a rent that does not exceed 30 percent
33 of 50 percent of area median income.

34 (2) An applicant shall agree to, and the city, county, or city and
35 county shall ensure that, the initial occupant of the
36 moderate-income units that are directly related to the receipt of the
37 density bonus in the condominium project as defined in
38 subdivision (f) of, or in the planned unit development as defined
39 in subdivision (k) of, Section 1351 of the Civil Code, are persons
40 and families of moderate income, as defined in Section 50093 of



1 the Health and Safety Code. Upon resale, the seller of the unit shall
2 retain the value of any improvements, the downpayment, and the
3 seller's proportionate share of appreciation. The local government
4 shall recapture its proportionate share of appreciation, which shall
5 then be used within three years for any of the purposes described
6 in subdivision (e) of Section 33334.2 of the Health and Safety
7 Code that promote homeownership. For purposes of this
8 subdivision, the local government's proportionate share of
9 appreciation shall be equal to the percentage by which the initial
10 sale price to the moderate-income household was less than the fair
11 market value of the home at the time of initial sale.

12 (d) An applicant may submit to a city, county, or city and
13 county a proposal for the specific incentives or concessions that the
14 applicant requests pursuant to this section, and may request a
15 meeting with the city, county, or city and county. The city, county,
16 or city and county shall grant the concession or incentive requested
17 by the applicant unless the city, county, or city and county makes
18 a written finding, based upon substantial evidence, of either of the
19 following:

20 (1) The concession or incentive is not required in order to
21 provide for affordable housing costs, as defined in Section
22 50052.5 of the Health and Safety Code, or for rents for the targeted
23 units to be set as specified in subdivision (c).

24 (2) The concession or incentive would have a specific adverse
25 impact, as defined in paragraph (2) of subdivision (d) of Section
26 65589.5, upon public health and safety or the physical
27 environment or on any real property that is listed in the California
28 Register of Historical Resources and for which there is no feasible
29 method to satisfactorily mitigate or avoid the specific adverse
30 impact without rendering the development unaffordable to low-
31 and moderate-income households.

32 The applicant may initiate judicial proceedings if the city,
33 county, or city and county refuses to grant a requested density
34 bonus, incentive, or concession. If a court finds that the refusal to
35 grant a requested density bonus, incentive, or concession is in
36 violation of this section, the court shall award the plaintiff
37 reasonable attorney's fees and costs of suit. Nothing in this
38 subdivision shall be interpreted to require a local government to
39 grant an incentive or concession that has a specific, adverse
40 impact, as defined in paragraph (2) of subdivision (d) of Section



1 65589.5, upon health, safety, or the physical environment, and for
2 which there is no feasible method to satisfactorily mitigate or
3 avoid the specific adverse impact. Nothing in this subdivision shall
4 be interpreted to require a local government to grant an incentive
5 or concession that would have an adverse impact on any real
6 property that is listed in the California Register of Historical
7 Resources. The city, county, or city and county shall establish
8 procedures for carrying out this section, that shall include
9 legislative body approval of the means of compliance with this
10 section. The city, county, or city and county shall also establish
11 procedures for waiving or modifying development and zoning
12 standards that would otherwise inhibit the utilization of the density
13 bonus on specific sites. These procedures shall include, but not be
14 limited to, such items as minimum lot size, side yard setbacks, and
15 placement of public works improvements.

16 (e) In no case may a city, county, or city and county apply any
17 development standard that will have the effect of precluding the
18 construction of a development meeting the criteria of subdivision
19 (b) at the densities or with the concessions or incentives permitted
20 by this section. An applicant may submit to a city, county, or city
21 and county a proposal for the waiver or reduction of development
22 standards and may request a meeting with the city, county, or city
23 and county. If a court finds that the refusal to grant a waiver or
24 reduction of development standards is in violation of this section,
25 the court shall award the plaintiff reasonable attorney's fees and
26 costs of suit. Nothing in this subdivision shall be interpreted to
27 require a local government to waive or reduce development
28 standards if the waiver or reduction would have a specific, adverse
29 impact, as defined in paragraph (2) of subdivision (d) of Section
30 65589.5, upon health, safety, or the physical environment, and for
31 which there is no feasible method to satisfactorily mitigate or
32 avoid the specific adverse impact. Nothing in this subdivision shall
33 be interpreted to require a local government to waive or reduce
34 development standards that would have an adverse impact on any
35 real property that is listed in the California Register of Historical
36 Resources.

37 (f) The applicant shall show that the waiver or modification is
38 necessary to make the housing units economically feasible.

39 (g) (1) For the purposes of this chapter, except as provided in
40 paragraph (2), "density bonus" means a density increase of at least



1 12.5 percent, unless a lesser percentage is elected by the applicant,
2 over the otherwise maximum allowable residential density under
3 the applicable zoning ordinance and land use element of the
4 general plan as of the date of application by the applicant to the
5 city, county, or city and county. The amount of density bonus to
6 which the applicant is entitled shall vary according to the amount
7 by which the percentage of affordable housing units exceeds the
8 percentage established in subdivision (b). For each 1 percent
9 increase above 10 percent in the percentage of units affordable to
10 lower income households, the density bonus shall be increased by
11 1.5 percent up to a maximum of 40 percent. For each 1 percent
12 increase above 5 percent in the percentage of units affordable to
13 very low income households, the density bonus shall be increased
14 by 2.5 percent up to a maximum of 40 percent. For each 1 percent
15 increase above 25 percent in the percentage of units affordable to
16 seniors, the density bonus shall be increased by 1 percent up to a
17 maximum of 40 percent. All density calculations resulting in
18 fractional units shall be rounded up to the next whole number. The
19 granting of a density bonus shall not be interpreted, in and of itself,
20 to require a general plan amendment, local coastal plan
21 amendment, zoning change, or other discretionary approval. The
22 density bonus shall not be included when determining the number
23 of housing units that is equal to 5, 10, or 25 percent of the total. The
24 density bonus shall apply to housing developments consisting of
25 five or more dwelling units.

26 (2) For the purposes of this chapter, if a development does not
27 meet the requirements of paragraph (1), (2), or (3) of subdivision
28 (b), but the applicant agrees or proposes to construct a
29 condominium project as defined in subdivision (f) of, or a planned
30 development as defined in subdivision (k) of, Section 1351 of the
31 Civil Code, in which at least 10 percent of the total dwelling units
32 are reserved for persons and families of moderate income, as
33 defined in Section 50093 of the Health and Safety Code, a “density
34 bonus” of at least 5 percent shall be granted, unless a lesser
35 percentage is elected by the applicant, over the otherwise
36 maximum allowable residential density under the applicable
37 zoning ordinance and land use element of the general plan as of the
38 date of application by the applicant to the city, county, or city and
39 county. For each 1 percent increase above 10 percent of the
40 percentage of units affordable to moderate-income households,



1 the density bonus shall be increased by 1 percent up to a maximum
2 of 40 percent. All density calculations resulting in fractional units
3 shall be rounded up to the next whole number. The granting of a
4 density bonus shall not be interpreted, in and of itself, to require
5 a general plan amendment, local coastal plan amendment, zoning
6 change, or other discretionary approval. The density bonus shall
7 not be included when determining the number of housing units that
8 is equal to 20 percent of the total. The density bonus shall apply
9 to housing developments consisting of five or more dwelling units.

10 (h) When an applicant for a tentative subdivision map, parcel
11 map, or other residential development approval donates land to a
12 city, county, or city and county as provided for in this subdivision,
13 the applicant shall be entitled to a 15 percent increase above the
14 otherwise maximum allowable residential density under the
15 applicable zoning ordinance and land use element of the general
16 plan for the entire development. This increase shall be in addition
17 to any increase in density mandated by subdivision (b), up to a
18 maximum combined mandated density increase of 40 percent if an
19 applicant seeks both the increase required pursuant to this
20 subdivision and subdivision (b). All density calculations resulting
21 in fractional units shall be rounded up to the next whole number.
22 An applicant shall be eligible for the increased density bonus
23 described in this subdivision if all of the following conditions are
24 met:

25 (1) The applicant ~~offers~~ *irrevocably agrees* to donate the land
26 no later than 60 days after approval of the final map, parcel map,
27 or residential development application.

28 (2) The developable acreage and zoning classification of the
29 land being donated are sufficient to permit construction of units
30 affordable to very low income households in an amount not less
31 than 10 percent of the number of residential units of the proposed
32 development.

33 (3) The donated land is appropriately zoned for development
34 as affordable housing and served by adequate public facilities and
35 infrastructure. The land shall have appropriate multifamily zoning
36 and development standards to make the development of the
37 affordable units feasible. The donated land shall be fully entitled
38 for the development of the affordable units, except that the local
39 government may subject the proposed development to subsequent
40 design review if the design is not known at the time of donation.



1 (4) The donated land and the affordable units shall be subject
2 to a deed restriction ensuring continued affordability of the units
3 consistent with paragraphs (1) and (2) of subdivision (c), which
4 shall be recorded on the property at the time of dedication.
5 (5) The land is donated to the local agency or to a housing
6 developer approved by the local agency.
7 (6) Donated land shall be within the boundary of the proposed
8 development or, if the local agency agrees, within one-quarter mile
9 of the boundary of the proposed development.
10 (i) (1) When an applicant proposes to construct a housing
11 development that conforms to the requirements of subdivision (b)
12 and includes a child care facility that will be located on the
13 premises of, as part of, or adjacent to, the project, the city, county,
14 or city and county shall grant either of the following:
15 (A) An additional density bonus that is an amount of square feet
16 of residential space that is equal to or greater than the amount of
17 square feet in the child care facility.
18 (B) An additional concession or incentive that contributes
19 significantly to the economic feasibility of the construction of the
20 child care facility.
21 (2) The city, county, or city and county shall require, as a
22 condition of approving the housing development, that the
23 following occur:
24 (A) The child care facility shall remain in operation for a period
25 of time that is as long as or longer than the period of time during
26 which the density bonus units are required to remain affordable
27 pursuant to subdivision (c).
28 (B) Of the children who attend the child care facility, the
29 children of very low income households, lower income
30 households, or families of moderate income shall equal a
31 percentage that is equal to or greater than the percentage of
32 dwelling units that are required for very low income households,
33 lower income households, or families of moderate income
34 pursuant to subdivision (b).
35 (3) Notwithstanding any requirement of this subdivision, a
36 city, county, or a city and county shall not be required to provide
37 a density bonus or concession for a child care facility if it finds,
38 based upon substantial evidence, that the community has adequate
39 child care facilities.



1 (4) “Child care facility,” as used in this section, means a child
2 day care facility other than a family day care home, including, but
3 not limited to, infant centers, preschools, extended day care
4 facilities, and schoolage child care centers.

5 (j) “Housing development,” as used in this section, means one
6 or more groups of projects for residential units constructed in the
7 planned development of a city, county, or city and county. For the
8 purposes of this section, “housing development” also includes
9 either (1) a project to substantially rehabilitate and convert an
10 existing commercial building to residential use, or (2) the
11 substantial rehabilitation of an existing multifamily dwelling, as
12 defined in subdivision (d) of Section 65863.4, where the result of
13 the rehabilitation would be a net increase in available residential
14 units. For the purpose of calculating a density bonus, the
15 residential units do not have to be based upon individual
16 subdivision maps or parcels. The density bonus shall be permitted
17 in geographic areas of the housing development other than the
18 areas where the units for the lower income households are located.

19 (k) The granting of a concession or incentive shall not be
20 interpreted, in and of itself, to require a general plan amendment,
21 local coastal plan amendment, zoning change, or other
22 discretionary approval. This provision is declaratory of existing
23 law.

24 (l) For the purposes of this chapter, concession or incentive
25 means any of the following:

26 (1) A reduction in site development standards or a modification
27 of zoning code requirements or architectural design requirements
28 that exceed the minimum building standards approved by the
29 California Building Standards Commission as provided in Part 2.5
30 (commencing with Section 18901) of Division 13 of the Health
31 and Safety Code, including, but not limited to, a reduction in
32 setback and square footage requirements and in the ratio of
33 vehicular parking spaces that would otherwise be required that
34 results in identifiable, financially sufficient, and actual cost
35 reductions.

36 (2) Approval of mixed use zoning in conjunction with the
37 housing project if commercial, office, industrial, or other land uses
38 will reduce the cost of the housing development and if the
39 commercial, office, industrial, or other land uses are compatible



1 with the housing project and the existing or planned development
2 in the area where the proposed housing project will be located.

3 (3) Other regulatory incentives or concessions proposed by the
4 developer or the city, county, or city and county that result in
5 identifiable, financially sufficient, and actual cost reductions.

6 This subdivision does not limit or require the provision of direct
7 financial incentives for the housing development, including the
8 provision of publicly owned land, by the city, county, or city and
9 county, or the waiver of fees or dedication requirements.

10 (m) If an applicant agrees to construct both 20 percent of the
11 total units for lower income households and 10 percent of the total
12 units for very low income households, the developer is entitled to
13 only one density bonus and at least one additional concession or
14 incentive identified under this section although the city, county, or
15 city and county may, at its discretion, grant more than one density
16 bonus.

17 (n) Nothing in this section shall be construed to supersede or in
18 any way alter or lessen the effect or application of the California
19 Coastal Act (Division 20 (commencing with Section 30000) of the
20 Public Resources Code).

21 (o) For purposes of this section, the following definitions shall
22 apply:

23 (1) "Development standard" means any ordinance, general
24 plan element, specific plan, charter amendment, or other local
25 condition, law, policy, resolution, or regulation.

26 (2) "Maximum allowable residential density" means the
27 density allowed under the zoning ordinance, or if a range of
28 density is permitted, means the maximum allowable density for
29 the specific zoning range applicable to the project.

30 SEC. 2. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 a local agency or school district has the authority to levy service
33 charges, fees, or assessments sufficient to pay for the program or
34 level of service mandated by this act, within the meaning of
35 Section 17556 of the Government Code.

